

## FIRST DIVISION

[ G.R. No. 161629, July 29, 2005 ]

**ATTY. RONALDO P. LEDESMA PETITIONER, VS. HON. COURT OF APPEALS, HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, HON. ABELARDO L. APORTADERA, IN HIS CAPACITY AS ASSISTANT OMBUDSMAN, AND OMBUDSMAN'S FACT FINDING AND INTELLIGENCE BUREAU, REPRESENTED BY DIRECTOR AGAPITO ROSALES, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari seeks to reverse and set aside the decision<sup>[1]</sup> dated August 28, 2003 and the resolution<sup>[2]</sup> dated January 15, 2004 of the Court of Appeals<sup>[3]</sup> in CA-G.R. SP No. 58264 which affirmed with modification public respondents' (1) Joint Resolution dated January 22, 1999, which ordered, among other things, petitioner's suspension for one (1) year for conduct prejudicial to the service; and (2) Order dated February 8, 2000, as reiterated in a Memorandum dated March 17, 2000, which denied petitioner's motion for reconsideration but reduced his suspension to nine (9) months without pay. The Court of Appeals modified the above issuances by further reducing petitioner's suspension from nine (9) months to six (6) months and one (1) day without pay.<sup>[4]</sup>

Petitioner Atty. Ronaldo P. Ledesma is the Chairman of the First Division of the Board of Special Inquiry (BSI) of the Bureau of Immigration and Deportation (BID). In a letter-complaint filed by Augusto Somalio with the Fact Finding and Intelligence Bureau (FIIB) of the Office of the Ombudsman, an investigation was requested on alleged anomalies surrounding the extension of the Temporary Resident Visas (TRVs) of two (2) foreign nationals. The FIIB investigation revealed seven (7) other cases of TRV extensions tainted with similar irregularities.

As a result, the FIIB, as nominal complainant, filed before the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman a formal complaint against herein petitioner. Also charged administratively were Atty. Arthel Caronongan and Ma. Elena P. Ang, Board Member and Executive Assistant, respectively, in petitioner's division. With respect to petitioner, the complaint was treated as both a criminal and an administrative charge and docketed as OMB-0-98-0214 (criminal aspect), for nine (9) counts of violation of the Anti-Graft and Corrupt Practices Act and for falsification of public documents, and OMB-ADM-0-98-0038 (administrative aspect), for nine (9) counts of Dishonesty, Grave Misconduct, Falsification of Public Documents and Gross Neglect of Duty.

The complaint against petitioner, Caronongan and Ang alleged the following illegal acts: (a) irregularly granting TRVs beyond the prescribed period; and (b) using "recycled" or photocopied applications for a TRV extension without the applicants

affixing their signatures anew to validate the correctness and truthfulness of the information previously stated therein. Specifically, petitioner and Caronongan allegedly signed the Memorandum of Transmittal to the Board of Commission (BOC) of the BID, forwarding the applications for TRV extension of several aliens whose papers were questionable.

In a Joint Resolution<sup>[5]</sup> dated January 22, 1999, Graft Investigation Officer Marlyn M. Reyes resolved the **administrative** cases filed against petitioner, Caronongan and Ang, as follows:

WHEREFORE, foregoing considered, it is respectfully recommended that:

1. Respondent ATTY. RONALDO P. LEDESMA be SUSPENDED from the service for one (1) year for Conduct Prejudicial to the Interest of the Service;
2. The instant case against ATTY. ARTHEL B. CARONONGAN be DISMISSED, the same having been rendered moot and academic; and
3. The instant case against respondent MA. ELENA P. ANG be DISMISSED for lack of sufficient evidence.

SO RESOLVED.<sup>[6]</sup>

Respondent Assistant Ombudsman Abelardo L. Aportadera, Jr. reviewed the Joint Resolution which was approved by respondent Ombudsman Desierto on December 29, 1999.<sup>[7]</sup>

In the meantime, on July 9, 1999, respondent Ombudsman approved a Resolution<sup>[8]</sup> dated June 22, 1999 of Graft Investigation Officer Marilou B. Ancheta-Mejica, dismissing the **criminal** charges against petitioner for insufficiency of evidence.<sup>[9]</sup>

Petitioner filed a motion for reconsideration<sup>[10]</sup> in the **administrative** case alleging that the BOC which reviews all applications for TRVs extension, approved the TRVs in question, hence, petitioner argued that it effectively declared the applications for extension regular and in order and waived any infirmity thereon.

In an Order<sup>[11]</sup> dated February 8, 2000, Graft Officer Reyes recommended the denial of the motion for reconsideration which was approved by respondent Ombudsman on March 24, 2000 but reduced the period of suspension from one (1) year to nine (9) months without pay.

On April 13, 2000, petitioner filed a petition for review with the Court of Appeals, which included a prayer for the issuance of a writ of preliminary prohibitory mandatory injunction and/or temporary restraining order to enjoin public respondents from implementing the order of suspension. The Court of Appeals issued the TRO on April 19, 2000.

In its Decision dated August 28, 2003, the Court of Appeals affirmed petitioner's suspension but reduced the period from nine (9) months to six (6) months and one (1) day without pay.<sup>[12]</sup>

With the denial of his motion for reconsideration, petitioner filed the instant petition for review on the following grounds:

I.

IN PROMULGATING ITS ASSAILED DECISION, RESPONDENT COURT OF APPEALS MANIFESTLY OVERLOOKED THE FOLLOWING RELEVANT FACTS AND MATTERS WHICH, IF PROPERLY CONSIDERED, WOULD HAVE JUSTIFIED A DIFFERENT CONCLUSION IN FAVOR OF PETITIONER:

...

II.

THE PRONOUNCEMENT OF RESPONDENT COURT OF APPEALS THAT THE FINDING OF THE OMBUDSMAN IS NOT MERELY ADVISORY ON THE BUREAU OF IMMIGRATION (BI) IS CONTRARY TO THE PERTINENT PROVISION OF THE 1987 CONSTITUTION AND APPLICABLE DECISIONS OF THE HONORABLE COURT.

III.

RESPONDENT COURT OF APPEALS ALSO FAILED TO CONSIDER THAT THE OMBUDSMAN'S RESOLUTION FINDING PETITIONER ADMINISTRATIVELY LIABLE CONSTITUTES AN INDIRECT ENCROACHMENT INTO THE POWER OF THE BUREAU OF IMMIGRATION OVER IMMIGRATION MATTERS.<sup>[13]</sup>

The petition lacks merit.

Petitioner insists that it was the BOC which approved the questioned applications for the extension of the TRVs. He denies that he misled or deceived the BOC into approving these applications and argues that the BOC effectively ratified his actions and sanctioned his conduct when it approved the subject applications. Petitioner adds that he acted in good faith and the government did not suffer any damage as a result of his alleged administrative lapse.

We are not persuaded. In his attempt to escape liability, petitioner undermines his position in the BID and his role in the processing of the subject applications. But by his own admission,<sup>[14]</sup> it appears that the BSI not only transmits the applications for TRV extension and its supporting documents, but more importantly, it interviews the applicants and evaluates their papers before making a recommendation to the BOC. The BSI reviews the applications and when it finds them in order, it executes a Memorandum of Transmittal to the BOC certifying to the regularity and propriety of the applications.

In *Arias v. Sandiganbayan*,<sup>[15]</sup> we stated that all heads of offices have to rely to a reasonable extent on their subordinates. Practicality and efficiency in the conduct of government business dictate that the gritty details be sifted and reviewed by the time it reaches the final approving authority. In the case at bar, it is not unreasonable for the BOC to rely on the evaluation and recommendation of the BSI as it cannot be expected to review every detail of each application transmitted for its approval. Petitioner being the Chairman of the First Division of the BSI has direct supervision over its proceedings. Thus, he cannot feign ignorance or good faith

when the irregularities in the TRV extension applications are so patently clear on its face. He is principally accountable for certifying the regularity and propriety of the applications which he knew were defective.

Petitioner could not validly claim that he was singled out for prosecution. It is of record that administrative cases were also filed against Caronongan and Ang, but extraneous circumstances rendered the case against Caronongan moot while the case against Ang was dismissed because it was proven that she merely implemented the approved decision of the BOC.

Equally untenable is the contention that the BOC's approval of the defective applications for TRV extension cured any infirmities therein and effectively absolved petitioner's administrative lapse. The instant administrative case pertains to the acts of petitioner as Chairman of the First Division of the BSI in processing nine (9) defective applications, independent of and without regard to the action taken by the BOC. It does not impugn the validity of the TRV extensions as to encroach upon the authority of the BID on immigration matters. The main thrust of the case is to determine whether petitioner committed any misconduct, nonfeasance, misfeasance or malfeasance in the performance of his duties.

Anent the second and third grounds, petitioner essentially puts in issue the import of the Ombudsman's findings. Petitioner questions the Court of Appeals' pronouncement that the findings of the Ombudsman "may not be said to be merely recommendatory" upon the Immigration Commissioner. He argues that to uphold the appellate court's ruling expands the authority granted by the Constitution to the Office of the Ombudsman and runs counter to prevailing jurisprudence on the matter, particularly *Tapiador v. Office of the Ombudsman*.<sup>[16]</sup> Petitioner submits that the Ombudsman's findings that the TRV applications were illegal constitutes an indirect interference by the Ombudsman into the powers of the BOC over immigration matters.

We do not agree. The creation of the Office of the Ombudsman is a unique feature of the 1987 Constitution.<sup>[17]</sup> The Ombudsman and his deputies, as protectors of the people, are mandated to act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations.<sup>[18]</sup> Foremost among its powers is the authority to investigate and prosecute cases involving public officers and employees, thus:

*Section 13.* The Office of the Ombudsman shall have the following powers, functions, and duties:

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, was passed into law on November 17, 1989 and provided for the structural and functional organization of the Office of the Ombudsman. RA 6770 mandated the Ombudsman and his deputies not only to act promptly on complaints but also to enforce the administrative, civil and criminal liability of government officers and

employees in every case where the evidence warrants to promote efficient service by the Government to the people.<sup>[19]</sup>

The authority of the Ombudsman to conduct administrative investigations as in the present case is settled.<sup>[20]</sup> Section 19 of RA 6770 provides:

SEC. 19. *Administrative Complaints.* — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

The point of contention is the binding power of any decision or order that emanates from the Office of the Ombudsman after it has conducted its investigation. Under Section 13(3) of Article XI of the 1987 Constitution, it is provided:

*Section 13.* The Office of the Ombudsman shall have the following powers, functions, and duties:

...

- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and *recommend* his removal, suspension, demotion, fine, censure, or prosecution, and *ensure compliance therewith*. (Emphasis supplied)

Petitioner insists that the word "*recommend*" be given its literal meaning; that is, that the Ombudsman's action is only advisory in nature rather than one having any binding effect, citing *Tapiador v. Office of the Ombudsman*,<sup>[21]</sup> thus:

... Besides, assuming *arguendo*, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "*recommend*" the removal of the public official or employee found to be at fault, to the public official concerned.<sup>[22]</sup>

For their part, the Solicitor General and the Office of the Ombudsman argue that the word "*recommend*" must be taken in conjunction with the phrase "*and ensure compliance therewith*". The proper interpretation of the Court's statement in *Tapiador* should be that the Ombudsman has the authority to determine the administrative liability of a public official or employee at fault, and direct and compel the head of the office or agency concerned to implement the penalty imposed. In other words, it merely concerns the *procedural* aspect of the Ombudsman's functions and not its *jurisdiction*.